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Nos. 3, 4 and 5

In the Supreme Court of the United States

OCTOBER TERM, 1927

HAMBURG-AMERICAN LINE TERMINAL & NAVIGATION COMPANY, APPELLANT

v.

THE UNITED STATES.

HAMBURG-AMERICAN LINE TERMINAL & NAVIGATION COMPANY, APPELLANT

v.

THE UNITED STATES.

ATLAS LINE STEAMSHIP COMPANY, APPELLANT

v.

THE UNITED STATES

APPEALS FROM THE COURT OF CLAIMS

BRIEFS FOR THE UNITED STATES

U. S. GOVERNMENT PRINTING OFFICE : 1928

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No. 3

Hamburg-American Line Terminal & Navigation Company, Appellant, v. The United States

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In the Supreme Court of the United States

OCTOBER TERM, 1927

No. 3

HAMBURG-AMERICAN LINE TERMINAL & NAVIGATION Company, Appellant

v.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The memorandum opinion of the Court of Claims adopting the opinion in *Deutsch-Australische Dampfschiffs-Gesellschaft, Appellant,* v. *The United States,* No. 12, October Term, 1927 (R. 12), is reported in 59 Ct. Cls. 461.

JURISDICTION

The judgment of the Court of Claims to be reviewed was entered March 17, 1924. (R. 12.) A motion for a new trial was entertained and denied May 26, 1924. (R. 19.) Application for appeal was filed June 4, 1924, and allowed June 16, 1924 (R. 20), pursuant to Sections 242 and 243 of the Judicial Code as they stood prior to the Act of February 13, 1925.

THE QUESTIONS PRESENTED

The United States took and held possession from April 6, 1917, to June 28, 1918, of docks and piers belonging to a New Jersey corporation, whose stock was owned by an alien enemy, the possession having been taken pursuant to the Act of August 29, 1916, authorizing the President in time of war to take possession of systems of transportation, and the question is whether the New Jersey corporation's property had the status of enemy property because the shares issued by that corporation were all owned by an enemy, or whether the corporation is entitled to the same treatment as a citizen and to compensation, on an implied contract, for the value of the use of this property.

The United States took the title to these docks and piers on June 28, 1918, pursuant to the Act of March 28, 1918, which expressly provided for compensation to be determined by the President. The question on this branch of the case is whether the compensation awarded by the President included interest on the value of the property from the date of the taking to the date of payment, and if not, whether the Court of Claims had jurisdiction to award compensation.

THE STATUTES

The statute under which possession was taken and held from April 6, 1917, to June 28, 1918, was the Act of August 29, 1916 (c. 418, 39 Stat. 619, 645; U. S. C. Title 10, Sec. 1361), which is as follows:

> The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon, for the transfer or transportation of troops, war material and equipment, or for such other purposes connected with the emergency as may be needful or desirable.

The Act of March 28, 1918 (c. 28, 40 Stat. 459), authorizing the taking of title to this property, contains the following provision:

> The President is authorized to acquire the title to the docks, piers, warehouses, wharves, and terminal equipment and facilities on the Hudson River now owned by the North German Lloyd Dock Company and the Hamburg-American Line Terminal and Navigation Company, two corporations of the State of New Jersey, if he shall deem it necessary for the national security and defense: *Provided,* That if such property can not be procured by purchase, then the President is authorized and empowered to take over for the United States the immediate possession and title thereof. If any such property shall be taken over as aforesaid, the United States shall make just compensation therefor to be determined by the President. Upon the taking over of said property by the President, as aforesaid, the title to all such property so taken

over shall immediately vest in the United States: *Provided further,* That section three hundred and fifty-five of the Revised Statutes of the United States shall not apply to any expenditures herein or hereafter authorized in connection with the property acquired.

STATEMENT

In this case recovery is sought by a New Jersey corporation, all of the stock of which was owned by an enemy corporation, for the value of the use of piers and terminal properties, possession of which was taken and held by the United States for the period from April 6, 1917, to June 28, 1918, for which it is alleged no compensation has ever been paid. Recovery is also sought for interest on the amount of an award of compensation for the taking of the title from the date of acquisition of title by the United States, June 28, 1918, to the date of payment of the award, January 5, 1919. The most important question in the case is whether a domestic corporation, all of whose stock is owned by an enemy corporation, is entitled to the same treatment as a citizen, or whether its property is properly considered enemy property.

The case was disposed of on demurrer to the petition.

The petition in this case alleged that plaintiff was and is a New Jersey corporation organized in 1899 (R. 1), and that it is and always has been a

subsidiary of the Hamburg-American Line, a German corporation, and that all of its issued stock is and always has been owned by the Hamburg-American Line (R. 1); that the outstanding shares of stock of the terminal company held by the Hamburg-American Line were in December, 1917, seized and taken over by the Alien Property Custodian under the Trading with the Enemy Act, and that the present officers and directors of the terminal company were placed in office through the voting power of the Alien Property Custodian (R. 1–2). It is alleged that the terminal company owned wharves, docks, and piers in Hoboken; that on April 6, 1917, the United States entered upon this property, and on April 20, 1917, made its entry exclusive by ejecting the terminal company, and from April 20, 1917, until the United States acquired title to the property on June 28, 1918, the Secretary of War, under the direction of the President and pursuant to the Act of August 29, 1916, retained its use and possession. (R. 2.) The petition further alleges the acquisition of title to the property by the United States on June 28, 1918, by proclamation of the President under the Act of March 28, 1918, and the award of compensation of the value as of June 28, 1918, and the payment of that compensation on January 5, 1919. (R. 2–3.) It is alleged that no compensation for the use of the property was paid for the period from April 6, 1917, to June 28, 1918. (R. 3.) There is no

allegation that the award by the President of December 3, 1918, did not include interest from June 28th to December 3d. (R. 3.) As to the amount found as the value on June 28th (R. 3), the petition assumes, without any allegation to that effect, that the compensation awarded by the President was the value as of June 28th, and was without any allowance for the delay in payment of the award. The relief sought is the value of the *use* from April 6, 1917, to June 28, 1918, and interest on the amount awarded for the *title* to the property for the period from June 28th, the date of the taking, to January 5, 1919, the date of the payment of the award. (R. 4.)

The Proclamation dated June 28, 1918 (40 Stat. 1804), was as follows:

> *Whereas* the Act of Congress making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses and for other purposes, approved March 28, 1918 (Public—No. 109—65th Congress), contains the following provisions:
>
> "The President is authorized to acquire the title to the docks, piers, warehouses, wharves, and terminal equipment and facilities on the Hudson River now owned by the North German Lloyd Dock Company and the Hamburg-American Line Terminal and Navigation Company, two corporations of the State of New Jersey, if he shall deem

it necessary for the national security and defense: *Provided,* That if such property can not be procured by purchase, then the President is authorized and empowered to take over for the United States the immediate possession and title thereof. If any such property shall be taken over as aforesaid, the United States shall make just compensation therefor to be determined by the President. Upon the taking over of said property by the President, as aforesaid, the title to all such property so taken over shall immediately vest in the United States: *Provided further,* That section three hundred and fifty-five of the Revised Statutes of the United States shall not apply to any expenditures herein or hereafter authorized in connection with the property acquired."

Now, therefore, I, Woodrow Wilson, President of the United States of America, pursuant to the authority vested in me by the said Act of Congress approved March 28, 1918, do hereby determine and declare that the acquisition of title to the foregoing docks, piers, warehouses, wharves, and terminal equipment and facilities, is necessary for the National security and defense, and I do hereby take over for the United States of America the immediate possession and title thereof, including all leaseholds, easements, rights of way, riparian rights and other rights, estates and interests therein or appurtenant thereto.

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Just compensation for the property hereby taken over will be hereafter determined and paid.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the District of Columbia this twenty-eighth day of June, one thousand nine hundred and eighteen, and of the Independence of the United States, one hundred and forty-two.

WOODROW WILSON.

By the President:
ROBERT LANSING,
Secretary of State.

The second Proclamation, awarding compensation, dated December 3, 1918 (40 Stat. 1914), is as follows:

Whereas the Act of Congress making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses and for other purposes, approved March 28, 1918 (Public—No. 109—65th Congress), contains the following provisions: (Here follows a copy of the Act of Congress.)

And whereas, pursuant to the authority vested in the President by said Act of Congress, approved March 28, 1918, the President by a proclamation duly made on the 28th day of June, 1918, determined and declared that the acquisition of title to the foregoing docks, piers, warehouses,

wharves, and terminal equipment and facilities was necessary for the national security and defense, and did thereby take over for the United States of America the immediate possession and title thereof, including all leaseholds, easements, rights of way, riparian rights and other rights, estates and interests therein or appurtenant thereto; a more particular description of which said property is set forth in the schedule marked "A" hereto annexed;

And whereas, pursuant to the authority vested in the President by said Act of Congress, approved March 28, 1918, it was in and by said proclamation of June 28, 1918, expressed and declared that just compensation for the property thereby taken over would be thereafter determined and paid;

Now, therefore, I, Woodrow Wilson, President of the United States of America, pursuant to the authority vested in me by the said Act of Congress, approved March 28, 1918, do hereby determine and declare that the just compensation for the property in and by said proclamation of June 28, 1918, expropriated for the United States of America is the sum of seven million, one hundred and forty-six thousand, five hundred eighty-three dollars ($7,146,583); and I do hereby order and direct that compensation for the same, aggregating said amount of $7,146,583, be made out of the money appropriated by the act approved December 15, 1917, entitled "An Act Mak-

ing appropriations to supply deficiencies in appropriations for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes," continuing and making available until June thirtieth, nineteen hundred and eighteen, the appropriation of $100,000,000 "for the national security and defense, and for each and every purpose connected therewith, to be expended at the discretion of the President," contained in the general deficiency appropriation Act approved April seventeenth, nineteen hundred and seventeen, to the parties and in the amounts set forth in the schedule marked A, hereto annexed; any part of the sum to be paid for which that appropriation does not suffice to be paid out of the similar appropriation for the fiscal year 1919.

And I do hereby further order, direct and require under the authority delegated to me by Section 6, subsection c, of the trading with the enemy Act, approved October 6, 1917, that the sum of money specified in said schedule which I determined to be payable to the North German Lloyd, a corporation of the Free and Hanseatic City of Bremen in the German Empire, be paid over to the Alien Property Custodian appointed under the provisions of said trading with the enemy Act, the same to be held by him subject to the provisions of said act.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the District of Columbia, this third day of December, in the year of our Lord one thousand, nine hundred and eighteen, and of the Independence of the United States the one hundred and forty-third.

WOODROW WILSON.

By the President,
ROBERT LANSING,
Secretary of State.

Schedule A, attached to the proclamation of December 3, 1918, contains the following (40 Stat. 1914, 1916):

To the Hamburg-American Line Terminal & Navigation Company, a corporation of the State of New Jersey, the sum of two million, three hundred fourteen thousand, eight hundred and seventy-seven dollars ($2,314,877), to be paid to said Hamburg-American Line Terminal & Navigation Company upon the satisfaction of record of all liens by way of mortgage, judgment or otherwise existing on, and all taxes and assessments due and exigible upon the foregoing premises, or any part thereof, on the 28th day of June, 1918.

SUMMARY OF ARGUMENT

I. If Congress intended that the property of the New Jersey corporation should be dealt with as enemy property because of the enemy ownership of the shares of stock, the Court of Claims was right in holding that no implied contract arose to pay compensation for the use of the docks and piers; but Congress appears to have adopted the policy of

determining the status of corporations as enemy or not by the place of incorporation and not the nationality of the shareholders. No doubt Congress has power to provide that property of a domestic corporation shall be treated as enemy owned where all the shares of the domestic corporation are enemy owned, but we do not think it has done so here. Its legislative policy has been to provide for seizure of the enemy-owned shares of domestic corporations and not the seizure as enemy owned of the property of such corporations. In this respect the United States does not attempt to sustain the judgment below. If this view be accepted, the appellant is entitled to compensation for the use of its docks and piers from the date possession was taken April 6, 1917, to the date title was taken, June 28, 1918.

II. The claim for interest on the award of compensation for the taking of the title of the docks and piers must be rejected. There is nothing on the face of the award by the President or in the petition in the Court of Claims to suggest that any item of just compensation was omitted or that the President in awarding to the appellant on December 3, 1918, the sum of $2,314,877, as just compensation for the property taken, did not take into account the delay in making payment.

If the President had awarded only the value at the date of taking without interest to the date of payment, the Court of Claims could not award addi-

tional compensation, because the statute authorizing the taking of title expressly provided that the compensation should be fixed by the President, and since all of the shares of the corporation were enemy owned, and Congress had power to treat the corporation's property as enemy owned, and the United States had the right of a belligerent to seize private property of alien enemies without making any compensation, it had the right to commit the determination of compensation to the President and make his action final.

ARGUMENT

I

BY THE STATUTE AUTHORIZING THE TAKING OF THE USE OF THE DOCKS AND PIERS, CONGRESS DID NOT DISCLOSE AN INTENTION THAT THE PROPERTY OF DOMESTIC CORPORATIONS SHOULD BE TREATED AS ENEMY-OWNED BECAUSE OF THE NATIONALITY OF THE STOCKHOLDERS.

There were originally twelve of these so-called German Ship Cases. Nine of them have been dismissed by appellants because of the enactment of the Settlement of War Claims Act approved March 10, 1928. In the nine cases dismissed, title to the property taken belonged at the time of seizure to alien enemies. In the three cases not dismissed, of which this is one, a special situation is found. In them the property seized belonged to corporations organized under the laws of States of this Union, all of the shares of which were enemy-owned, and the

question arises whether Congress intended that the property of such domestic corporations should be treated as having the status of enemy-owned property or that compensation should be paid as if the property were owned by a citizen or an ally.

Only one opinion was written by the Court of Claims in disposing of the twelve cases, and that was in *Deutsch-Australische Dampfschiffs-Gesellschaft, Appellant,* v. *The United States,* No. 12, October Term, 1927, set forth in the record in this case at page 13. The Court of Claims makes no mention of the question here considered, but the record in the Court of Claims discloses that the United States contended there that the property of the New Jersey corporation should be treated as the property of an enemy because all of the issued stock belonged to an enemy corporation. The Court of Claims evidently accepted that view, although not mentioning the point in its opinion. The authorities cited by the United States in the Court of Claims in support of this contention are certain English Prize Cases.

In the case of the *St. Tudno,* Lloyd's Reports of Prize Cases, Vol. V, p. 198, the following appears:

> A steamship [the *St. Tudno*], of which the registered owners were a British company, was before the war used as a tender at Southampton to the vessels of the Hamburg-Amerika Linie. She had been bought in 1912 by the Hamburg-Amerika Linie, who caused her to be transferred to the British

company, by whom she was in form chartered for five years to the Hamburg-Amerika Linie. All the shareholders were nominees of the Hamburg-Amerika Linie, who appointed the directors, gave them their qualifications, and took from them blank transfers of their qualifying shares, and an agreement to conform to the instructions of the Hamburg-Amerika Linie and account to the latter for all dividends. Soon after the outbreak of war the vessel was requisitioned as a British ship by the Admiralty, in whose employment she was at the time of seizure.

Held that even if all the circumstances had been known to the Admiralty (which they were not), the fact that she was under requisition was immaterial, that the beneficial ownership was vested in the Hamburg-Amerika Linie, and that she must be regarded as enemy property * * *. (Pp. 198–199.)

The court, speaking through the President, says:

In this case the Crown asks for the condemnation of a paddle steamer, the *Saint Tudno,* which, up to the time of the outbreak of war between this country and Germany, was at all material times used as a tender in or about Southampton for the liners of the Hamburg-Amerika Linie. The claim of the Crown is grounded on the contention that this steamer was enemy property, and that is the question which I have to determine in this case.

* * * * *

> The steamship belonged nominally to a British company registered in this country. In my opinion, in this Court of Prize, I have a right to look, and am bound to look, at something beyond the nominal ownership. The British company had, I think, three British directors and some British shareholders; but the documents which are now before me show clearly what the position of those directors, as directors, was, and what the position of those gentlemen as shareholders was. (Pp. 204–205.)
>
> * * * * *
>
> Now, apart from technicalities, could anybody say that this ship belonged to a British company? If it did in name belong to a British company, that covering was the merest thinnest shell, and I must break through it, as I do break through it, in order to ascertain who the real owners of the ship were. There can be no doubt that the real owners are the Hamburg-Amerika Linie; and if the ship earned during the period of war (as it has earned up till now) considerable sums, all those sums would have to be accounted for to that enemy company. (Pp. 207–208.)

The same doctrine is stated in the case of the *Michigan* (Lloyd's Reports of Prize Cases, Vol. V, p. 421):

> All the shares in a company registered in Great Britain were held by a German corporation, except six registered in the names of the directors and secretary of the com-

pany, all German subjects, and of a French employee of the corporation, resident before the war in Germany.

Held that goods belonging to the British company were liable to be condemned as enemy property.

The judgment concludes with the following words (p. 423):

> I hold that this company for all purposes affecting this case must be regarded as an enemy company, although carrying on business here, and the property must be condemned as enemy property.

In the case of *Daimler Company* (*Limited*) v. *Continental Tyre and Rubber Company* (*Great Britain*) (*Limited*), decided in the House of Lords June 30, 1916, 2 A. C. (1916) 307 (Times Law Reports, Vol. XXXII, pp. 624, 626), Lord Halsbury uses the following language (p. 316):

> The limited liability was a very useful introduction into our system, and there was no reason why foreigners should not, while dealing honestly with us, partake of the benefits of that institution, but it seems to me too monstrous to suppose that for an unlawful, because, after a declaration of war, a hostile, purpose the forms of that institution should be used, and enemies of the State, while actually at war with us, be allowed to continue trading and actually to sue for their profits in trade in an English Court of justice.

These English cases do not necessarily dispose of the question here.

Congress without doubt has the power to provide that property of a domestic corporation shall be treated as enemy-owned where all of the stock of the domestic corporation is owned by an enemy.

The English cases are authority for the proposition that a government may look through the form of corporate organization to the beneficial ownership when determining whether property is enemy-owned, but the question in the United States is one of legislative intention as disclosed by our own legislation on this subject. For very practical reasons and to avoid confusion in the application of laws dealing with enemy property, Congress has adopted the policy of treating the property of domestic corporations as not enemy property, regardless of the nationality of the shareholders, and has preferred the method of seizing the shares of stock as enemy-owned rather than of treating the property of the corporation as enemy-owned.

In the Trading With The Enemy Act, approved October 6, 1917 (c. 106, 40 Stat. 411), in Section 2, subdivision (a), an enemy was defined as including—

> any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

In *Behn, Meyer & Co.* v. *Miller, Alien Property Custodian*, 266 U. S. 457, decided January 5, 1925, after the decision of the Court of Claims in this case, the Court held that under the Trading With The Enemy Act the status of a corporation was not fixed by the nationality of its stockholders and said (p. 472):

> Before its passage the original Trading with the Enemy Act was considered in the light of difficulties certain to follow disregard of corporate identity and efforts to fix the status of corporations as enemy or not according to the nationality of stockholders. These had been plainly indicated by the diverse opinions in *Daimler Co.* v. *Continental Tyre & Rubber Co.*, 2 A. C. (1916) 307 * * *.

The Trading With The Enemy Act was constructed on the theory that in a case like the present the enemy-owned shares of the domestic corporation should be seized by the Alien Property Custodian, not the property of the corporation itself, and that is the course which was followed in the case of the appellant. In dealing with corporations Congress thus definitely adopted the policy of disregarding stock ownership as a test of enemy character, and the petition discloses that the shares of stock of the appellant, formerly owned by the Hamburg-American Line, an enemy corporation, were seized by the Alien Property Custodian in December, 1917. The intention of Congress on this subject is made evi-

dent in the statute known as the Settlement of War Claims Act of 1928, approved March 10, 1928, the pertinent provisions of which are printed in the appendix to this brief. That Act provides for the return of or compensation for enemy property seized by the Alien Property Custodian, but it also specially provides for adjustment through a war claims arbiter and payment for the merchant vessels which were involved in the nine other German ship cases and some other property not seized by the Alien Property Custodian under the Trading with the Enemy Act, but seized under other statutes by other officials of the United States. It nowhere provides for the determination or payment of compensation for property owned by domestic corporations the shares of which were enemy owned. Since it discloses an intention to return or pay compensation for all private property of alien enemies seized during the war, the omission of provisions which would authorize domestic corporations, the shares of which were enemy owned, to recover compensation for corporate property seized by the United States can only be explained on the theory that Congress has intended that such corporations shall be treated as citizens and that compensation for their property taken shall be awarded in the courts if no special provision has otherwise been made.

Section 3(b) of that Act provides that it shall be the duty of the arbiter "to hear the claims of any German national as hereinafter defined." Section

22 of the Act, in defining German nationals, includes—

> A partnership, association, or corporation, which, on April 6, 1917, was organized or created under the law of Germany—

thus excluding appellant in this case.

If compensation for the use of these piers may not be recovered in this action, then no compensation is recoverable without further legislation.

It may be added that the Department of Justice brought to the attention of those having charge of this legislation in Congress the situation presented by these three cases, with the suggestion that the legislation expressly provide for award of compensation by the arbiter, to dispose of these cases and remove the necessity for their consideration by this Court, but we understand that such provisions were deliberately omitted from the Act because they would have complicated it and because it was supposed that the domestic corporations in these three cases are in a position to recover compensation in the courts.

If this Court accepts the judgment of the Court of Claims that the property of appellant is to be treated as enemy-owned when the possession of the docks and piers were taken, then no recovery may be had for the value of that use because no express provision was made in the Act of August 29, 1916, for compensation and no obligation exists to pay

compensation for private property of alien enemies seized in time of war.

Ware v. *Hylton*, 3 Dall. 199.
Brown v. *United States*, 8 Cranch 110.
Miller v. *United States*, 11 Wall. 268.

On the other hand, if the nationality of the shareholders did not fix an enemy status on the property of these domestic corporations, an implied contract arose to pay compensation for the use of the docks and piers, use of which was retained without compensation from April 6, 1917, to June 28, 1918, the date when the title was taken.

II

THE COMPENSATION AWARDED BY THE PRESIDENT FOR THE TAKING OF THE TITLE TO THE DOCKS AND PIERS JUNE 28, 1918, WAS ADEQUATE AND JUST AND THE COURT OF CLAIMS HAS NOT JURISDICTION TO REVIEW HIS AWARD

The title to these docks and piers was taken June 28, 1918. The award of compensation by the President was made December 3, 1918. The appellant contends that the sum fixed as just compensation by the President was the value of the property at the date of the taking, June 28, 1918, and did not take into account as part of just compensation interest on that value to the date of the award. The short answer to that contention is that there is nothing on the face of the award which supports the contention. The award does not state that the

amount awarded was merely the value as of the date of the taking. The sum stated was that determined by the President to be "just compensation," and there is no allegation in the petition in the Court of Claims that the amount awarded as just compensation December 3, 1918, was merely the value of the property on June 28. The delay in payment from December 3, 1918, to January 5, 1919, may have been to allow the title to be cleared and liens discharged. Aside from that, it appears that the title was taken pursuant to the Act of March 28, 1918 (c. 28, 40 Stat. 459), which expressly authorized the President to acquire the docks and piers of the Hamburg-American Line Terminal & Navigation Company. This Act had provided that the United States "shall make just compensation therefor to be determined by the President." The Act gave to the President the exclusive power to determine compensation and has not granted jurisdiction to the Court of Claims to review his decisions. Since all of the shares of the appellant were enemy owned and Congress had power, if it chose to exercise it, to look beneath the corporate organization and treat the property of this corporation as enemy owned because of the enemy ownership of all of its shares, Congress had power to withhold compensation or to allow the President to fix it and make his decision final.

In so far as the Court of Claims refused to award any further compensation to the appellant for the

property taken in June, 1918, its decision was obviously correct.

CONCLUSION

If this Court concludes that the nationality of the shareholders of the domestic corporation determined the status of the corporation's property as enemy property, the judgment of the Court of Claims should be affirmed.

If it concludes that Congress intended, in so far as concerns the legislation authorizing the taking of the use of the docks and piers, that the status of the property should be determined by the place of incorporation, the judgment should be reversed with direction to ascertain just compensation for the use of the docks and piers from April 6, 1917, to June 28, 1918, if the appellant sustains the allegation in its petition that no such compensation has been paid.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.

APRIL, 1928.

No. 4

Hamburg-American Line Terminal & Navigation Company, Appellant, v. The United States

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If the property of the appellant, a domestic corporation, is to be considered enemy property because the shares of stock were enemy owned, the judgment of the Court of Claims should be affirmed; but, if the contrary view is accepted, its judgment should be reversed	28

In the Supreme Court of the United States

OCTOBER TERM, 1927

No. 4

HAMBURG-AMERICAN LINE TERMINAL & NAVIGATION Company, Appellant

v.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The memorandum opinion of the Court of Claims adopting the opinion in *Deutsch-Australische Dampfschiffs-Gesellschaft* v. *The United States*, No. 12, October Term, 1927 (R. 12), is reported in 59 Ct. Cls. 461.

JURISDICTION

The judgment to be reviewed was entered March 17, 1924. (R. 12.) A motion for new trial was entertained and denied May 26, 1924. The application for appeal was filed June 4, 1924 (R. 20),

pursuant to Sections 242 and 243 of the Judicial Code, as they stood prior to the effective date of the Act of February 13, 1925.

THE QUESTION PRESENTED

The only question in this case is whether the property of a domestic corporation all the shares of which were enemy owned had the status of enemy property, or whether on the United States taking the property an implied contract arose, as in the case of a citizen, to pay compensation.

THE STATUTE

The Act under which the possession and use of appellant's property was taken is the Act of August 29, 1916, printed on page 3 of the brief in No. 3, authorizing the President in time of war to take possession and assume control of systems of transportation.

STATEMENT

The appellant in this case is the same corporation as the appellant in No. 3. It is a New Jersey corporation, all of the shares of which were at the time of the seizure of its property held and owned by the Hamburg-American Line, a German corporation. The case was disposed of in the Court of Claims on the demurrer to the complaint, the court holding, on the assumption that the appellant was an enemy corporation and its property had the status of enemy property, that its seizure did not give rise to an implied contract to pay com-

pensation, of which the Court of Claims had jurisdiction.

The petition alleged that the appellant was the owner of two tugboats, a launch, a barge, and a coal hoister, of the value of $184,124.66 (R. 2), and that on or about April 6, 1917, the United States requisitioned and took possession and control of this property pursuant to the Act of Congress of August 29, 1916, authorizing the President in time of war to take possession and assume control of systems of transportation, and that on April 17, 1917, the property was turned over by the Treasury officials, who had seized it, to the War Department, and that ever since the property has remained in the possession and use of the War Department of the United States. (R. 3.) The petition does not make it clear whether the title of the property was taken or merely its use, and recovery was sought for the reasonable value of the property or for the value of its use, although there was no allegation as to what the use was worth.

ARGUMENT

IF THE PROPERTY OF THE APPELLANT, A DOMESTIC CORPORATION, IS TO BE CONSIDERED ENEMY PROPERTY BECAUSE THE SHARES OF STOCK WERE ENEMY-OWNED, THE JUDGMENT OF THE COURT OF CLAIMS SHOULD BE AFFIRMED; BUT IF THE CONTRARY VIEW IS ACCEPTED, ITS JUDGMENT SHOULD BE REVERSED

This case presents the same question as to the status of the property of a New Jersey corporation

the shares of which were all owned by an enemy as is dealt with in No. 3, above. What has been said under subdivision I in that brief is sufficient for the purposes of this case.

We suggest here, as in that case, that Congress had the power to treat the property of a domestic corporation the shares of which were enemy-owned as enemy property, but that the legislation on this subject discloses that its intention has been to treat the shares of such a corporation as enemy-owned property, but to deal with the corporate property as that of a citizen. If that be the law, the judgment of the Court of Claims should be reversed and the case remanded for an award of compensation for whatever was taken.

The petition in the Court of Claims leaves some matters in obscurity. It was alleged that the use of these vessels and also the title or ownership were seized and taken by the United States. The Act under which it is alleged the seizure took place authorized the President to take possession of systems of transportation during war. It did not authorize the taking of title, and in the absence of further legislation the right to retain the use would end after the termination of war.

There may have been some other statute not pleaded which authorized the taking of the title of these vessels.

These are matters which may be cleared up if the case is remanded to the Court of Claims, and need not be analyzed here.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.

APRIL, 1928.

No. 5

Atlas Line Steamship Company, Appellant, v. The United States

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In the Supreme Court of the United States

OCTOBER TERM, 1927

No. 5

ATLAS LINE STEAMSHIP COMPANY, APPELLANT

v.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The memorandum opinion of the Court of Claims adopting the opinion in *Deutsch-Australische Dampfschiffs-Gesellschaft* v. *The United States*, No. 12, October Term, 1927 (R. 12), is reported in 59 Ct. Cls. 461.

JURISDICTION

The judgment to be reviewed was entered March 17, 1924. (R. 12.) A motion for a new trial was entertained and denied May 26, 1924. Application for appeal was filed June 4, 1924, and allowed June 16, 1924. (R. 19.)

THE QUESTION PRESENTED

The only question presented in this case is whether vessels belonging to a New Jersey corporation all of the shares of which were enemy-owned had the status of enemy property, so that on seizure by the United States no implied contract arose to pay compensation.

THE STATUTES

The statute under which it is alleged possession of the barges was taken is the Act of August 29, 1916, authorizing the President in time of war to take possession of systems of transportation. That statute is printed on page 3 of the brief in No. 3.

The statute under which the title to the barges is alleged to have been taken later, is the Joint Resolution of May 12, 1917 (c. 13, 40 Stat. 75), which is as follows:

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President be, and he is hereby, authorized to take over to the United States the immediate possession and title of any vessel within the jurisdiction thereof, including the Canal Zone and all territories and insular possessions of the United States except the American Virgin Islands, which at the time of coming into such jurisdiction was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war when such vessel shall

be taken, or was flying the flag of or was under register of any such nation or any political subdivision or municipality thereof; and, through the United States Shipping Board, or any department or agency of the Government, to operate, lease, charter, and equip such vessel in any service of the United States, or in any commerce, foreign or coastwise.

SEC. 2. That the Secretary of the Navy be, and he is hereby, authorized and directed to appoint, subject to the approval of the President, a board of survey, whose duty it shall be to ascertain the actual value of the vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking, and to make a written report of their findings to the Secretary of the Navy, who shall preserve such report with the records of his department. These findings shall be considered as competent evidence in all proceedings on any claim for compensation.

STATEMENT

This case was disposed of by the Court of Claims on demurrer. The appellant is a corporation organized under the laws of New Jersey (R. 1), and at the time of the seizure of its property all of its outstanding shares were held and owned by the Hamburg-American Line, a German corporation, and an enemy. The German-owned shares were seized by the Alien Property Custodian in Decem-

ber, 1917 (R. 1), but the corporation's property here involved was taken in April, 1917.

The petition alleged that this appellant was the owner of three barges of the value of $14,250, and that on or about April 6, 1917, the United States requisitioned the barges, which were shortly thereafter turned over to the War Department for use of the Army transport service; that on June 30, 1917, the President, by an executive order, issued pursuant to the Joint Resolution of May 12, 1917, took title to the three barges, together with the other vessels enemy owned, and that no compensation has ever been paid for the use of the barges or for their value. Recovery is sought for the value of the barges as of the date they were taken possession of by the United States, April 6, 1917, with interest from that date. (R. 2–3.)

ARGUMENT

IF THE PROPERTY OF THE APPELLANT, A DOMESTIC CORPORATION, IS TO BE CONSIDERED ENEMY PROPERTY BECAUSE THE SHARES OF STOCK WERE ENEMY-OWNED, THE JUDGMENT OF THE COURT OF CLAIMS SHOULD BE AFFIRMED; BUT IF THE CONTRARY VIEW IS ACCEPTED, ITS JUDGMENT SHOULD BE REVERSED

This case presents the same question as to the status of property of a domestic corporation the shares of which were enemy-owned, which is presented in No. 3, and what has been said in subdivision I of the brief in that case is applicable here. We think the property of this domestic corporation

should not be treated as enemy-owned because the shares of the corporation were owned by an enemy. Although in the Settlement of War Claims Act, approved March 10, 1928, provision has been made for compensation for merchant vessels seized by the United States which at the time of seizure were owned by enemy aliens or by corporations organized under the laws of enemy nations or organized in foreign countries and doing business in enemy territory, no provision has been made for compensation for these vessels which when seized were owned by a domestic corporation whose shares were enemy-owned, and unless recovery may be had in this proceeding no compensation may be recovered without further legislation. This confirms the view that Congress has not intended that the property of a domestic corporation should be treated as enemy property because of enemy ownership of its outstanding shares.

In this case title to these vessels was ordered by the President to be taken pursuant to the Joint Resolution of May 12, 1917, which authorized the taking of possession and title of vessels "owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war," or which flew the flag of or were under the registry of any such nation. The President in this case seems to have assumed that this appellant was a corporation of a nation with which the United States was at war, because of the enemy ownership

of its shares. The point was probably given little consideration at the time, as only three lighters were involved, of small value. We think that this appellant was not an enemy corporation within the meaning of the Joint Resolution of May 12, 1917.

If the appellant is to be treated as an enemy corporation at the time of this seizure, the judgment of the Court of Claims should be affirmed. If not considered as having that status, the judgment below should be reversed and the case remanded to the Court of Claims to award just compensation for the use prior to the taking of title and for the vessels themselves, if title was taken.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.

APRIL, 1928.

APPENDIX

SETTLEMENT OF WAR CLAIMS ACT OF MARCH 10, 1928

(Public No. 122, 70th Congress)

SEC. 3. (a) There shall be a War Claims Arbiter (hereinafter referred to as the "Arbiter"), who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to any provision of law prohibiting the holding of more than one office. The Arbiter, notwithstanding any other provision of law, shall receive a salary to be fixed by the President in an amount, if any, which if added to any other salary will make his total salary from the United States not in excess of $15,000 a year.

(b) It shall be the duty of the Arbiter, within the limitations hereinafter prescribed, to hear the claims of any German national (as hereinafter defined), and to determine the fair compensation to be paid by the United States, in respect of—

(1) Any merchant vessel (including any equipment, appurtenances, and property contained therein), title to which was taken by or on behalf of the United States under the authority of the Joint Resolution of May 12, 1917 (Fortieth Statutes, page 75). Such compensation shall be the fair value, as nearly as may be determined, of such vessel to the owner immediately prior to the time exclusive possession was taken under the authority

of such Joint Resolution, and in its condition at such time, taking into consideration the fact that such owner could not use or permit the use of such vessel, or charter or sell or otherwise dispose of such vessel for use or delivery, prior to the termination of the war, and that the war was not terminated until July 2, 1921, except that there shall be deducted from such value any consideration paid for such vessel by the United States. The findings of the Board of Survey appointed under the authority of such Joint Resolution shall be competent evidence in any proceeding before the Arbiter to determine the amount of such compensation.

(2) Any radio station (including any equipment, appurtenances, and property contained therein) which was sold to the United States by or under the direction of the Alien Property Custodian under authority of the Trading with the Enemy Act, or any amendment thereto. Such compensation shall be the fair value, as nearly as may be determined, which such radio station would have had on July 2, 1921, if returned to the owner on such date in the same condition as on the date on which it was seized by or on behalf of the United States, or on which it was conveyed or delivered to, or seized by, the Alien Property Custodian, whichever date is earlier, except that there shall be deducted from such value any consideration paid for such radio station by the United States.

(3) Any patent (or any right therein or claim thereto, and including an application therefor and any patent issued pursuant to any such application) which was licensed, assigned, or sold by the Alien Property Custodian to the United States. Such compensation shall be the amount, as nearly as

may be determined, which would have been paid if such patent, right, claim, or application had been licensed, assigned, or sold to the United States by a citizen of the United States, except that there shall be deducted from such amount any consideration paid therefor by the United States (other than consideration which is returned to the United States under section 27 of the Trading with the Enemy Act, as amended).

(4) The use by or for the United States of any invention described in and covered by any patent (including an application therefor and any patent issued pursuant to any such application) which was conveyed, transferred, or assigned to, or seized by, the Alien Property Custodian, but not including any use during any period between April 6, 1917, and November 11, 1918, both dates inclusive, or on or after the date on which such patent was licensed, assigned, or sold by the Alien Property Custodian. In determining such compensation, any defense, general or special, available to a defendant in an action for infringement or in any suit in equity for relief against an alleged infringement, shall be available to the United States.

(c) The proceedings of the Arbiter under this section shall be conducted in accordance with such rules of procedure as he may prescribe. The Arbiter, or any referee designated by him, is authorized to administer oaths, to hold hearings at such places within or without the United States as the Arbiter deems necessary, and to contract for the reporting of such hearings. Any witness appearing for the United States before the Arbiter or any such referee at any place within or without the United States may be paid the same fees and mile-

age as witnesses in courts of the United States. Such payments shall be made out of any funds in the German special deposit account hereinafter provided for, and may be made in advance.

(d) The Arbiter may, from time to time, and shall, upon the determination by him of the fair compensation in respect of all such vessels, radio stations, and patents, make a tentative award to each claimant of the fair compensation to be paid in respect of his claim, including simple interest, at the rate of 5 per centum per annum, on the amount of such compensation from July 2, 1921, to December 31, 1928, both dates inclusive. If a German national filing a claim in respect of any such vessel fails to establish to the satisfaction of the Arbiter that neither the German Government nor any member of the former ruling family had, at the time of the taking, any interest in such vessel, either directly or indirectly, through stock ownership or control or otherwise, then (whether or not claim has been filed by or on behalf of such Government or individual) no award shall be made to such German national unless and until the extent of such interest of the German Government and of the members of the former ruling family has been determined by the Arbiter. Upon such determination the Arbiter shall make a tentative award in favor of such Government or individual in such amount as the Arbiter determines to be in justice and equity representative of such interest, and reduce accordingly the amount available for tentative awards to German nationals filing claims in respect of the vessel so that the aggregate of the tentative awards (including awards on behalf of the German

Government and members of the former ruling family) in respect of the vessel will be within the amount of fair compensation determined under subsection (b) of this section.

(e) The total amount to be awarded under this section shall not exceed $100,000,000, minus the sum of (1) the expenditures in carrying out the provisons of this section (including a reasonable estimate for such expenditures to be incurred prior to the expiration of the term of office of the Arbiter) and (2) the aggregate consideration paid by the United States in respect of the acquisition of such vessels and radio stations, and the use, license, assignment, and sale of such patents (other than consideration which is returned to the United States under section 27 of the Trading with the Enemy Act, as amended).

* * * * *

(q) The provisions of this section shall constitute the exclusive method for the presentation and payment of claims arising out of any of the acts by or on behalf of the United States for which this section provides a remedy. Any person who files any claim or makes application for any payment under this section shall be held to have consented to all the provisions of this Act. This subsection shall not bar the presentation of a claim under section 21 (relating to the claims of certain former German nationals in respect of the taking of the vessels *Carl Diederichsen* and *Johanne*); but no award shall be made under section 21 in respect of either of such vessels to or on behalf of any person to whom or on whose behalf an award is made under this section in respect of such vessel.

SEC. 21. (a) It shall be the duty of the Arbiter to hear the claims of any partnership, association, joint-stock company, or corporation, and to determine the amount of compensation to be paid to it by the United States, in respect of the merchant vessels *Carl Diederichsen* and *Johanne* (including any equipment, appurtenances, and property contained therein), title to which was taken by or on behalf of the United States under the authority of the Joint Resolution of May 12, 1917, and which were subsequently sold by or on behalf of the United States. Such compensation shall be determined as provided in paragraph (1) of subsection (b) of section 3 of this Act, but the aggregate compensation shall not exceed, in the case of the *Carl Diederichsen*, $166,787.78 and in the case of the *Johanne*, $174,600 (such amounts being the price for which the vessels were sold, less the cost of reconditioning). The Arbiter shall not make any award under this section in respect of the claim of any partnership, association, joint-stock company, or corporation unless it appears to his satisfaction that all its members and stockholders who were, on April 6, 1917, citizens or subjects of Germany, became, by virtue of any treaty of peace or plebiscite held or further treaty concluded under such treaty of peace, citizens or subjects of any nation other than Germany, and that all its members and stockholders on the date of the enactment of this Act were on such date citizens or subjects of nations other than Germany.

* * * * *

(d) The provisions of this section shall constitute the exclusive method for the presentation and payment of claims arising out of any of the acts by or on behalf of the United States for which this

section provides a remedy. Any person who files any claim or makes application for any payment under this section shall be held to have consented to all the provisions of this Act. This subsection shall not bar the presentation of a claim under section 3 (relating to the ship claims of German nationals) in respect of the taking of the vessel *Carl Diederichsen* or the vessel *Johanne;* but no award shall be made under section 3 in respect of either of such vessels to or on behalf of any person to whom or on whose behalf an award is made under this section in respect of such vessel.

SEC. 22. As used in this Act—

(a) The term "person" means an individual, partnership, association, or corporation.

(b) The term "German national" means—

(1) An individual who, on April 6, 1917, was a citizen or subject of Germany, or who, on the date of the enactment of this Act, is a citizen or subject of Germany.

(2) A partnership, association, or corporation, which, on April 6, 1917, was organized or created under the law of Germany.

(3) The Government of Germany.

(c) The term "member of the former ruling family" means (1) any person who was at any time between April 6, 1917, and July 2, 1921, the German Emperor or the ruler of any constituent kingdom of the German Empire, or (2) the wife or any child of such person.

(d) The term "Austrian national" means—

(1) An individual who, on December 7, 1917, was a citizen of Austria, or who, on the date of the enactment of this Act, is a citizen of Austria.

(2) A partnership, association, or corporation which, on December 7, 1917, was organized or created under the law of Austria.

(3) The Government of Austria.

(e) The term "Hungarian national" means—

(1) An individual who, on December 7, 1917, was a citizen of Hungary, or who, on the date of the enactment of this Act, is a citizen of Hungary.

(2) A partnership, association, or corporation which, on December 7, 1917, was organized or created under the law of Hungary.

(3) The Government of Hungary.

(f) The term "United States" when used in a geographical sense includes the Territories and possessions of the United States and the District of Columbia.

O